

**BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes**

June 18, 2009

A meeting of the Board of Environmental Protection was held on Thursday, June 18, 2009 at the Augusta Civic Center, Augusta, Maine. Susan M. Lessard, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

Board: M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, Frank Woodard, and Nancy Ziegler.

Board member P. Andrews Nixon departed at approximately 2:15 p.m. Board member M. Wing Goodale departed at approximately 1:30 p.m.

Absent: Elizabeth Ehrenfeld

Staff: Mike Mullen, Bureau of Land and Water Quality
Tom Danielson, Bureau of Land and Water Quality
Jeff Crawford, Bureau of Air Quality
Deb Avalone-King, Bureau of Air Quality
George Seel, Bureau of Remediation and Waste Management
Jeff Madore, Bureau of Remediation and Waste Management

Others: David P. Littell, Commissioner
Nancy Macirowski, Assistant Attorney General
Jan McClintock, Assistant Attorney General (HoltraChem matter only)
Cindy Bertocci, BEP Executive Analyst
Terry Hanson, BEP Administrative Assistant

(Meeting adjourned at approximately 3:30 p.m.)

Public Hearings: The Board convened its meeting with two public hearings to receive comments on proposed rules.

1. Public Hearing 9:00 a.m., Chapter 131 Cutback Asphalt and Emulsified Asphalt / Amendments
2. Public Hearing 9:30 a.m., Chapter 583 Nutrient Criteria for Fresh Surface Waters / New

Note: Immediately following the close of the public hearings the Board considered its regular agenda.

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS:

Energy Bill: The U.S. Senate Energy and Natural Resources Committee reported an energy bill out with a 15% renewable portfolio standard, of which 25% can be met through energy efficiency improvements. This is weaker than Maine would like to see. Additionally, this bill opens part of the Gulf of Mexico to drilling and includes protections from life cycle analysis for oil and other products such as those coming from the Alberta oil sands. It is anticipated that the Senate will combine this bill with a climate change bill later this year. On the House side, the Waxman-Markey bill could be debated next week. Governor Baldacci is in support of Waxman-Markey however, the Administration believes that it should be strengthened to address a possible pre-emption provision which may negatively impact the RGGI cap and trade program. The funding for allocations from this bill would provide approximately 10% to energy efficiency nationwide compared to the average of 70% in the 10 allocation to RGGI states, and an additional 15% for renewable development. Maine is at about 88% energy efficiency, and we think that there should be more support for energy efficiency and more support for climate adaptation and wildlife and habitat.

Regional Greenhouse Gas Initiative (RGGI): The results of Wednesday's auction are being analyzed today. Secondary markets are holding strong at about \$3.50 per allowance. The working group has been focused on implementation issues and tracking climate change bills at the federal level including possible federal pre-emption of the program. The working group has just published the off-set protocols and associated categories and these are on the RGGI website. Additionally, DEP is working with and commenting on the Maine Forest Service, Environment Northeast and Manomet Center for Conservation proposal to develop off-sets concerning forest management to be submitted to RGGI.

Legislature: The Maine State Legislature adjourned at 2:30 Saturday morning. Commissioner Littell provided the following update: (1) Climate Change Bill – only the provisions addressing culvert design for fish passage passed.; (2) Energy conservation portions of DEP's bill (LD 891) related to development were carried over, DEP will conduct stakeholder outreach this summer. (3) A bill that transforms the RGGI Energy

and Carbon Reduction Trust into Efficiency Maine Trust and provides a broader mandate passed. (4) Mercury reduction bill concerning collection and recycling of mercury-containing lighting passed. (5) Portions of DEP's bill regarding the Ground Water Fund passed, but the funding issues were not addressed. (6) The bill concerning transfer of licenses of privately owned and municipal incinerators passed (note: bill requires 180-day due diligence and BEP jurisdiction). (7) New recycling standards for construction demolition debris passed; the Board will see rule amendments related to these changes. and (8) The bill that requires State- owned solid waste disposal facilities to undergo public benefit determinations passed.

QUESTIONS: Board member Richard Gould asked for an update on the Agriculture Composting Bill.

The Commissioner explained that the Joint Standing Committee on Natural Resources voted the bill out "ought not to pass". The majority report was adopted.

B. COMMENTS FROM THE BEP CHAIR:

Chair Lessard noted that the Board has selected a consultant to provide technical assistance during review of the Mallinckrodt's appeal of the Commissioner's order concerning the former HoltraChem site in Orrington. The contract for services is being finalized.

C. EXECUTIVE ANALYST COMMENTS: Board members will receive a copy of the finalized contract for their reference.

D. BOARD CALENDAR: Reviewed.

E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING: None

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS:

The Board voted (7-0-2-1) on a motion to approve consent agenda item 1 as presented.

Board members M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Lissa Widoff, and Nancy Ziegler voted to support the motion. Board members Matt Scott and Frank Woodard abstained. Board member Elizabeth Ehrenfeld was absent. [It was noted that Board member Nancy Ziegler abstained from the vote on the Rice appeal.]

1. BEP MINUTES – April 16, 2009 (approval)

The Board voted (8-0-1-1) on a motion to approve consent agenda item 2 as presented.

Board members M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, and Nancy Ziegler voted to support the motion. Board member Frank Woodard abstained. Board member Elizabeth Ehrenfeld was absent.

II CONSENT AGENDA ITEMS: (CONT.)

2. BEP MINUTES – May 7, 2009 (approval)

The Board voted (9-0-0-1) on a motion to approve consent agenda items 3, 4 and 5 as presented.

Board members M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board member Elizabeth Ehrenfeld was absent.

3. SNOWY OWL CAMP LTD., Athens -- Administrative Consent Agreement (BLWQ - Water)
4. ABRAM ENVIRONMENTAL, Windham – Administrative Consent Agreement (BRWM)
5. BEACON HOUSE PROPERTIES LLC, Lewiston – Administrative Consent Agreement (BRWM)

III. Regular Agenda

1. CHAPTER 305, PERMIT BY RULE / Amendments (adoption*)
Staff: Mike Mullen, Bureau of Land and Water Quality

The Board voted (9-0-0-1) on a motion to adopt amendments to Chapter 305, Permit By Rule amendments (routine technical). Amendments propose limiting access ways to natural resources to a footpath, stairway or steps, eliminating permit by rule for riprap on a coastal shoreline, modifying elevation requirements for culverts, and allowing new activities in existing developed areas in significant vernal pool habitat.

The vote was taken pursuant to 38 M.R.S. §§ 341-D(1-B), 480-A through 480-GG.

Board members M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board member Elizabeth Ehrenfeld was absent.

2. CHAPTER 305, PERMIT BY RULE, Activities in Coastal Sand Dunes / Amendments (provisional adoption*)
Staff: Mike Mullen, Bureau of Land and Water Quality

The Board voted (9-0-0-1) on a motion to provisionally adopt amendments to Chapter 305, Permit By Rule Section 16 Activities in Coastal Sand Dunes (major substantive). Amendments incorporate definition changes consistent with Chapter 355, Coastal Sand Dune, allow new activities in a sand dune (winter cobble-trapping fences) and allow other activities in existing developed areas. The vote was taken pursuant to 38 M.R.S. §§ 341-D(1-B) and 480-H.

Board members M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board member Elizabeth Ehrenfeld was absent.

3. CHAPTER 691, RULES FOR UNDERGROUND OIL STORAGE FACILITIES, Section 3-A Siting Restrictions for New Facilities / Amendment (post to 30-day written comment)

Staff: George Seel, Bureau of Remediation and Waste Management

Staff: Jeff Madore, Bureau of Remediation and Waste Management

The Board voted (9-0-0-1) on a motion to post amendments to Chapter 691, Rules for Underground Oil Storage Facilities, Section 3-A Siting Restrictions for New Facilities for public comment. The proposed amendments would repeal section 3-A for the purpose of incorporating siting restrictions for underground oil storage facilities into new Chapter 692 which will address the siting of both aboveground and underground oil storage facilities. The Board established June 30, 2009, as the deadline for receipt of written comments. The vote was taken pursuant to 38 M.R.S. § 341-D(1-B), §1391-1399 and PL 2007, chapter 569, section 7.

Board members M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board member Elizabeth Ehrenfeld was absent.

4. CHAPTER 692, SITING OF OIL STORAGE FACILITIES / NEW (post to public hearing)

Staff: George Seel, Bureau of Remediation and Waste Management

Staff: Jeff Madore, Bureau of Remediation and Waste Management

The Board voted (9-0-0-1) on a motion to post new Chapter 692, Siting of Oil Storage Facilities to a public hearing. This new rule would implement the wellhead protection provision of statute by setting geographic restrictions on the siting of new aboveground and underground oil storage tanks and facilities. The proposed rule would establish a prohibition on siting within wellhead protection zones or a sand and gravel aquifer (mapped by Maine Geological Survey), with some exceptions and variance provisions. The Board anticipates conducting a public hearing on August 6, 2009, with a deadline for written public comments of August 17, 2009. The vote was taken pursuant to 38 M.R.S. §341-D(1-B), §1391-1399 and PL 2007, chapter 569, section 7.

Board members M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board member Elizabeth Ehrenfeld was absent.

5. CHAPTER 700, WELLHEAD PROTECTION: SITING OF FACILITIES THAT POSE A SIGNIFICANT THREAT TO DRINKING WATER / NEW (post to public hearing)

Staff: George Seel, Bureau of Remediation and Waste Management

Staff: Jeff Madore, Bureau of Remediation and Waste Management

The Board voted (9-0-0-1) on a motion to post new Chapter 700, Wellhead Protection: Siting of Facilities that Pose a Significant Threat to Drinking Water to a public hearing. This regulation would protect drinking water resources by restricting the geographic location of certain types of facilities that handle hazardous matter

(e.g. automobile body shop/repair facility, automobile graveyards, dry cleaning facilities that use perchloroethylene, metal finishing and plating facilities, and commercial hazardous waste facilities.). It would establish a prohibition on siting within wellhead protection zones and sand and gravel aquifers (low use, moderate yield, and high potential aquifers), with some exceptions and variance provisions. The Board anticipates conducting a public hearing on August 6, 2009, with a deadline for written public comments of August 17, 2009. The vote was taken pursuant to 38 M.R.S. §341-D(1-B), §1391-1399 and PL 2007, chapter 569, section 7.

Board members M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board member Elizabeth Ehrenfeld was absent.

6. CHAPTER 161, GRAPHIC ARTS – OFFSET LITHOGRAPHY AND LETTERPRESS PRINTING / NEW (post to hearing)

Staff: Deb Avalone-King, Bureau of Air Quality

The Board voted (9-0-0-1) on a motion to post new Chapter 161, Graphic Arts, Offset Lithography and Letterpress Printing rules to a public hearing. This regulation would update state rules regarding reasonably available control technology (RACT) controls on major sources of volatile organic compounds (VOC) by restricting VOC emissions from offset lithography and letterpress operations. The proposed rule would require sources to determine emission levels, implement work practices to comply with VOC and composite vapor pressure limits and standards, and comply with recordkeeping and reporting requirements. The Board anticipates conducting a public hearing on August 6, 2009, with a August 17, 2009 deadline for written public comments. The vote was taken pursuant to 38 M.R.S. §341-D(1-B), §585-A and Section 184 of the 1990 Clean Air Act Amendments.

Board members M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, Frank Woodard and Nancy Ziegler voted to support the motion. Board member Elizabeth Ehrenfeld was absent.

9. UNITED STATES SURGICAL CORP. / MALLINCKRODT, LLC: APPEAL OF COMMISSIONER'S DESIGNATION AND ORDER // HOLTRACHEM Site (petitions to intervene)

Board member M. Wing Goodale stated for the record that he has recused himself from participation in the Board's consideration of U.S. Surgical Corp. / Mallinckrodt's appeal of the Commissioner's Designation of Uncontrolled Hazardous Substance Site and Order for the HoltraChem facility.

The Second Procedural Order issued by the Presiding Officer, Chair Susan Lessard, on May 29, 2009, lifted the administrative stay of the Board's proceeding in this matter, found the Board hearing is an adjudicatory hearing within the meaning of the Maine Administrative Procedure Act, and established a deadline for the filing of petitions for leave to intervene in the proceeding. In response to the Second Procedural Order, Mallinckrodt submitted two motions, (1) Motion to Dismiss Compliance Order or, in the alternative, Stay Proceeding for Failure to Adopt Rules of

Practice, and (2) Motion to Dismiss for Failure to Pursue Cleanup in Superior Court. Prior to the Board meeting it was determined that the motions would be addressed at the June 26, 2009 conference of the parties after all parties had had a chance to respond to the matters in writing.

The Board voted (7-0-1-2) on a motion to grant the Town of Orrington's Petition for Leave to Intervene in the Board's proceeding.

The Board voted (7-0-1-2) on a motion to grant the Maine People's Alliance Petition for Leave to Intervene in the Board's proceeding.

Note: Petitioner Heather Foster withdrew her petition for intervenor status at the meeting.

The votes were taken pursuant to 38 M.R.S. § 1365 and the Maine Administrative Procedure Act.

Board members Richard Gould, Don Guimond, Sue Lessard, Matt Scott, Lissa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board member M. Wind Goodale recused. Board member Elizabeth Ehrenfeld and P. Andrews Nixon were absent.

7. CHAPTER 100, DEFINITIONS REGULATION / AMENDMENT (post to 30-day written comment)

Staff: Jeffrey Crawford, Bureau of Air Quality

The Board voted (7-0-0-3) on a motion to post for public comment amendments to Chapter 100, Definitions Regulations which would update the definition of volatile organic compound (VOC) pursuant to reflect the delisting of three compounds by the U. S. Environmental Protection Agency. The VOC compounds proposed for exclusion are: (1) decaflouro-3-methoxy-4-triflouromethyl-pentane, (2) dimethyl carbonate, and (3) propylene carbonate. The Board set the July 30, 2009 as the deadline for submission of written public comment. The vote was taken pursuant to 38 M.R.S. §341-D(1-B) and §585-A.

Board members Richard Gould, Don Guimond, Sue Lessard, Matt Scott, Lissa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board members Elizabeth Ehrenfeld, M. Wing Goodale, and P. Andrews Nixon were absent.

8. STATE IMPLEMENTATION PLAN (SIP) – REASONABLY AVAILABLE CONTROL TECHNOLOGY (RACT) and APPENDIX A MCCAIN FOODS USA, INC., TATERMEAL FACILITY / AMENDMENTS (post to 30-day written comment)

Staff: Jeffrey Crawford, Bureau of Air Quality

The Board voted (7-0-0-3) on a motion to post amendments to the State Implementation Plan (SIP), and to include the McCain Foods USA, Inc. Tatermeal Facility in the Departments' submittal to EPA. Amendments to the SIP incorporate reasonably available control technology (RACT) provisions for paving operations as outlined in Chapter 131 to achieve additional VOC emission reductions in nonattainment areas for the 8-hour ozone standard. The motion also provides for an opportunity for written comment on the inclusion of the McCain Foods USA, Inc. Tatermeal Facility in the SIP for VOC RACT. The Board established July 24, 2009 as the deadline submission of written public comment. The vote was taken pursuant to 38 M.R.S. §341-D(1-B) and §585-A and Section 182 of the 1990 Clean Air Act Amendment.

Board members Richard Gould, Don Guimond, Sue Lessard, Matt Scott, Lissa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board members Elizabeth Ehrenfeld, M. Wing Goodale, and P. Andrews Nixon were absent.

Next Regular Meeting –Thursday, July 16, 2008 – Holiday Inn/Ground Round